IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6261 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : Yes.
to see the judgements? No.

2. To be referred to the Reporter or not? No. :

3. Whether Their Lordships wish to see the fair copy of the judgement? No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No. : NO

5. Whether it is to be circulated to the Civil Judge? No. : NO

BHULABHAUI R DHODIYA

Versus

C N SHAH

Appearance:

MR JB PARDIWALA for Petitioner

MR MJ TRIVEDI for Respondent No. 1

MS MANISHA LAVKUMAR AGP for respondents no. 2 to 5.

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 12/09/2000

ORAL JUDGEMENT

The petitioner challenges the order dated 22-7-1991 of the Gujarat Revenue Tribunal, rejecting his revision application and confirming the order of the Deputy Collector dated 26-6-1989 by which the order of the Mamlatdar holding that the petitioner was a tenant

was set aside.

2. According to the petitioner he was cultivating the land in question and giving half share to the landlord. In the proceedings under Section 70 (b) of the Bombay Tenancy and Agricultural Lands Act, 1948, the Mamlatdar and A.L.T. by his order dated 20-11-1988 declared that the applicant was a tenant of the land in question. In the process the Mamlatdar held that though in the Village Form 7/12 for the year 1987-88 method "1" was shown, meaning thereby that the owner was cultivating the land, the owner had admitted that he was residing at Bombay and therefore he could not have been cultivating the land. It was held that, on the other hand, the applicant was not able to establish, beyond doubt that he was a tenant of the land. He however held that the applicant was in possession of the land and was giving share in the mango crop to the owner. The applicant was, on this basis, declared as a tenant of 6 Acres 11 Gunthas of land bearing Survey No. 239 Part of village Velparva. In the appeal against that order, the Deputy Collector noted that there was no documentary or other reliable evidence for indicating that the original applicant was giving any share to the owner in the crop or paying land revenue, or that he was the tenant of the land in question. The order of the Mamlatdar was therefore set aside. The petitioner thereupon approached the Tribunal and the Tribunal finding that the petitioner's name was not mentioned in the village record as a tenant and that there was important correspondence in the form of letters dated 16-10-1964 and 10-7-1987 which indicated that the petitioner was not a tenant and that he was getting remuneration for looking after the land in question and after noticing that when the land was acquired in 1989 it was the owner alone who was given compensation, came to a finding that the Deputy Collector was right in coming to the conclusion that the petitioner was not a tenant of the land in question.

3. The learned counsel appearing for the petitioner contended that there was a clear finding of the Mamlatdar that crop share was being given to the owner and therefore in view of the definition of the expression "to cultivate personally" occurring in Section 2 (6) (iii) of the said Act read with Section 4 thereof, the applicant was rightly held to be a tenant of the land in question by the Mamlatdar. It was submitted that the finding was not disturbed by the Appellate Revisional Authority. It was also submitted that there was a clear admission made by the owner that he was not personally cultivating the land in question. It was argued that the letter offering

to purchase the land, written by the son of the original applicant, had no effect of establishing that the applicant was not a tenant of the land.

4. From the order of the Tribunal it is clear that the Tribunal has based its findings on the relevant material placed on the record. It has given cogent reasons for coming to the conclusion that the original applicant was not a tenant of the land in question as held by the Deputy Collector while setting aside the Mamlatdar's order under which the petitioner was held to be a tenant. The finding regarding giving of crop share reached by the Mamlatdar was also considered and it was found that the view taken by the Dy. Collector that there was no evidence on record regarding giving of any crop share to the owner was correct. It was also noticed that the tenant was not paying any land revenue nor was it shown from which year was he in the possession of the land in question. The Tribunal has acted in lawful exercise of its jurisdiction on the basis of the material on record warranting no interference with the impugned order by this Court in exercise of its extra ordinary jurisdiction under the Constitution. The petition is, therefore, rejected. Rule is discharged, with no order as to costs. Interim relief stands vacated.

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/JVSatawara/